## qrulepubliccomments

**From:** Teresa R Finkell [trf03@health.state.ny.us]
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**Subject:** Federal Register Comments
**Attachments:** Quarantine Regulation Comments NY.pdf

The following comments are submitted on behalf of the New York State Department of Health regarding:

42 CFR Parts 70 and 71
RIN 0920-AA03
Control of Communicable Diseases

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January 30, 2006

Center for Disease Control and Prevention
Division of Global Migration and Quarantine
ATTN: Q Rule Comments
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RE: 42 CFR Parts 70 and 71
RIN 0920-AA03
Control of Communicable Diseases

To Whom It May Concern:

The New York State Department of Health has reviewed the proposed regulations for quarantine of travelers published in the Federal Register and offers the following comments:

1. The regulations fail to state any governmental purpose or use for the extensive collection of personal information about travelers. The regulations should clearly identify that the collection of information is for the purpose of conducting contact tracing. Further, they should identify who is responsible for follow-up of exposed individuals. If those responsible are not federal officials, the regulations should specify how the appropriate officials would be notified of the need to conduct the follow-up, as well as the privacy protections that must be observed. Currently, New York State Department of Health has a role in the follow-up of cases of meningitis or measles that occur in flight, for example.

2. Section 70.10 is unclear on the potential for the Director of the CDC to attempt to appropriate public or private hospitals within a state for quarantine purposes, pursuant to voluntary agreements with those institutions, presumably in a public health emergency. The supplementary materials for this section refer to the: "control, management, and control [sic]" of such institutions by the Director. As a result, it appears the CDC believes the regulations allow for the possibility that the Director could attempt to impose control over institutions with which voluntary agreements have been signed. New York hospital managers and operators do not have the authority to cede control to the federal government. Absent assurances in the regulations that there will never be attempted federal takeover of hospitals, however, the state may be forced to discourage hospitals from signing such agreements in order to avoid future legal proceedings to argue over that authority. The supplementary materials should delete references to "control" and "management" of public and private institutions, and limit such terms to quarantine stations and/or other strictly federal sites. In addition, this regulation should provide for coordination of efforts with states so that states are kept informed of the potential use of assets within the state for federal purposes.

3. The proposed regulations perpetuate ongoing confusion regarding the meaning of the terms "isolation" and "quarantine." Although the supplementary materials explain the difference, the actual definitions do not; further, the word "quarantine" is used throughout the regulations for both concepts, leading to considerable confusion, as noted below. The regulations should define the words "isolation" and "quarantine" consistent with the understanding that is stated in the supplementary materials for §70.16 (however, the phrase "or able to transmit that disease to others" should be deleted to reflect the fact that some diseases are transmissible prior to the onset of symptoms.) Subsequent sections of the regulations should be amended to reflect the amended definitions of the two words.

4. The regulations are replete with conflicting provisions regarding the authority to impose federal quarantine on interstate travelers. According to the supplementary materials for §70.16, interstate travelers may be quarantined prior to the onset of illness; however, not only do the regulations themselves not provide this authority clearly, it could very easily be argued that there is an obvious intention not to do so. First, Part 71 by express terms authorizes both quarantine and isolation; in contrast, part 70 omits all references to "exposed persons." Second, "provisional quarantine" does not clearly apply to exposed persons: "Provisional quarantine" is for those who are in a "qualifying stage" of a disease (see §70.1(b)), but while the definition of "qualifying stage" includes a "precommunicable stage" (see §70.1(b)), it does not clearly include exposure as a "precommunicable stage." Since a person who has only been exposed may not develop the disease, it cannot be shown that an exposed person is actually in a "stage" of any disease in the absence of a specific provision to that effect in the definition of "qualifying stage." In addition, a newly exposed person will not test positive for the disease in question unless and until they have completed the incubation period and have actually developed the disease; since the stated purpose for provisional quarantine is to allow time for the results of lab tests to be determined (see supplementary materials for §70.14), it appears that provisional quarantine would not apply to newly exposed persons. Third, although §70.16 states that a quarantine order is valid through the period of incubation as well as the period of communicability, the standards set for issuing such an order can never be met for the purposes of quarantine: As above, the same problem with the definition of "qualifying stage" prevents the application of quarantine orders to exposed persons. Even if that definition were changed to include exposure as a "stage" of a disease, the standard for initiating quarantine on those affecting others in interstate travel is too high for exposed persons; since an exposed person is not known to be infected, they could be a "potential" source of infection, but not a "probable" source as is required by the current standard. As a result of the above, the regulations are confusing at best as to the authority to impose quarantine on interstate travelers, and unclear as to the limits of that authority even if it exists, to the point that it appears that the only possible application of that authority is the issuance of quarantine orders, but not provisional quarantine, and then only on those who are actually in interstate travel. The regulations should clearly define the terms "isolation" and "quarantine" and use those terms consistently throughout the regulations as noted above, and should clearly specify the intended limits of quarantine authority. If the intention is to authorize quarantine of

interstate travelers, then the definition of "qualifying stage" should be amended so as not to exclude its application to exposed persons. In addition, there should be no discernible difference between the standard for quarantine for those actually in interstate travel, and those exposing others in interstate travel.

We appreciate the opportunity to provide comments on this important proposal.

Sincerely,

Guthrie Birkhead, MD, MPH
Director
Center for Community Health